

# Exhibit 1

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Michael Ben-Jacob - October 11, 2021

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
MASTER DOCKET 18-MD-2865 (LAK)  
CASE NO. 18-CV-09797

-----  
IN RE: )  
)  
)

CUSTOMS AND TAX ADMINISTRATION OF )  
THE KINGDOM OF DENMARK )  
(SKATTEFORVALTNINGEN) TAX REFUND )  
SCHEME LITIGATION )  
)  
-----)

C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL  
EXAMINATION OF  
MICHAEL BEN-JACOB  
DATE: October 11, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

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6 (Pages 18 to 21)

Page 18

1 Q I'm asking you for your  
2 understanding, in your words, if you  
3 understand that's what you were called upon  
4 to do?

5 A Well, since I don't have a  
6 recollection of using those words, I would  
7 say it is not true that we were called upon  
8 to use -- to -- I say "we," meaning my  
9 firm -- was called upon to implement or  
10 advise upon all aspects.

11 We were asked to advise upon U.S.  
12 legal issues, U.S. tax and pension plan  
13 issues, and occasional other coordination of  
14 advice with foreign counsel and  
15 administrative matters.

16 But I was certainly not involved in  
17 all aspects.

18 Q Let me ask you, please, to turn to  
19 Exhibit 4480?

20 MR. MAGUIRE: Mark 4480.

21 (Whereupon the above mentioned was  
22 marked for Identification.)

23 A I'm sorry. Yes, so I have this  
24 exhibit in front of me.

25 Q And can you tell us, what is this

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1 exhibit, sir?

2 A This is a memorandum from me to the  
3 compensation committee of Kaye Scholer dated  
4 February 1, 2015.

5 Q If you could turn, sir, to the  
6 second page of the document, at the end of  
7 the first full paragraph, you'll see the last  
8 sentence starts with the words, "For example,  
9 we were called upon by my longstanding  
10 client, Argre Management LLC, to implement  
11 all aspects of annex dividend trading  
12 strategy."

13 Do you see those words?

14 A I do see those words.

15 Q Were those words true when you  
16 wrote them?

17 A In the context in which they're  
18 provided the compensation committee, yes,  
19 they were, of course, true.

20 Q Are they true today?

21 A What I meant here by "all aspects"  
22 is all aspects with respect to U.S. side tax  
23 advice, pension advice, and other -- other  
24 related matters as they applied, you know, to  
25 U.S. law, not, for example, foreign law,

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1 Danish law, or other matters related to the  
2 actual trading.

3 Q Did you draft documentation for the  
4 transactions that your former clients did  
5 involving Danish securities?

6 MR. DEWEY: Objection.

7 A Well, draft documentation can mean  
8 many things.

9 Can you please explain what you  
10 mean by "documentation?"

11 Q Draft documents. You know,  
12 partnership agreements.

13 A Okay. Yes. As part of the  
14 services the firm rendered to the clients, we  
15 drafted documents such as partnership  
16 agreements as part of the overall services  
17 that we provided.

18 Q And when you drafted documents with  
19 respect to the Danish trading transactions,  
20 did that mean that you approved your former  
21 clients entering into the Danish trading  
22 transactions?

23 MR. DEWEY: Objection.

24 A So to --

25 MR. DEWEY: Go ahead.

Page 21

1 A To clarify -- sorry.

2 Can you just rephrase or restate  
3 your question?

4 Q Let me give you a different  
5 question.

6 Did you tell your clients that you  
7 approved their entering into the Danish  
8 trading transactions?

9 A I did not tell my clients. And to  
10 my knowledge, others in the firm did not tell  
11 the clients that we approved of the Danish  
12 trading transactions, nor were we asked by  
13 the clients to render that advice.

14 Q Did you -- whether you told anyone  
15 or not -- ever approve of your clients  
16 entering into any Danish trading  
17 transactions?

18 MR. DEWEY: Objection.

19 A What the firm approved were the  
20 U.S. tax implications and treatment and U.S.  
21 regulatory treatment of the -- yeah, of the  
22 trading.

23 Q Did you ever tell your clients that  
24 you or your firm did not approve of any  
25 aspects of any Danish trading transactions?

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7 (Pages 22 to 25)

Page 22

1 MR. DEWEY: Objection.

2 A Again, to be clear, we did not  
3 advise on the trading of Danish securities.  
4 We advised only on the U.S. and pension  
5 aspects -- U.S. tax aspects of the ownership  
6 of those shares.

7 Q Was there any aspect of the trading  
8 in Danish shares in the establishment of any  
9 LLCs, the sponsoring of any plans, the  
10 trading or transactions associated with that,  
11 or the making of any applications for  
12 reclaims to Denmark?

13 Taking that entire ex-dividend  
14 strategy as a whole, was there any aspect of  
15 that as to which you or your firm told any of  
16 your former clients they should not do or  
17 that you believed it was not appropriate to  
18 do?

19 MR. DEWEY: Objection.

20 A You listed seven or eight things.  
21 I would have to ask you to take them one by  
22 one.

23 Q Let me put it to you as a more  
24 broad and general question.  
25 Is there any time in your

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1 representation of any of your former clients  
2 where you said, "No, you should not do this?"

3 MR. DEWEY: Objection.

4 A With respect to the U.S. advice  
5 that we were asked to render, I believe that  
6 there were strategies or thoughts as to how  
7 the ownership should be held or how payments  
8 should be made among the clients or their  
9 entities or their pension plans where the  
10 appropriate lawyers with that substantive  
11 area of expertise, typically on the pension  
12 side, advised the clients that they should  
13 not do whatever was at issue.

14 Q Did you ever provide any assurance  
15 to any of your former clients that it was  
16 appropriate for a plan to represent to  
17 Denmark that the plan was the beneficial  
18 owner of Danish shares or Danish dividends?

19 MR. DEWEY: Objection.

20 A Can you please explain your  
21 question?

22 Q You understood that the plans that  
23 were set up in this ex-dividend strategy were  
24 going to be making reclaim applications to  
25 Denmark.

Page 24

1 Correct?

2 A Yes, I understood that.

3 Q Did you ever provide any assurance  
4 to any of your former clients that those  
5 plans could appropriately represent that they  
6 were the beneficial owners of Danish shares  
7 or Danish dividends?

8 MR. DEWEY: Objection.

9 A My firm advised that for U.S. tax  
10 and pension law purposes, the pension plans  
11 that engaged in the trading were -- could  
12 appropriately represent that they were the  
13 owners of the shares, again, from a U.S. tax  
14 and pension law perspective.

15 Q That the plans could appropriately  
16 represent, for U.S. tax purposes, that they  
17 were the beneficial owners of the shares.

18 Is that correct?

19 A That's correct.

20 Q And to whom were the plans  
21 representing, for U.S. tax purposes, that  
22 they were the beneficial owners of the  
23 shares?

24 A Well, for example, to the IRS and  
25 to -- from a regulatory perspective, to the

Page 25

1 Federal Reserve.

2 Q And when did the plans represent to  
3 the IRS that they were the beneficial owners  
4 of the shares?

5 A Well, perhaps it wasn't the plans  
6 that represented to the IRS. Perhaps it was  
7 the individuals.

8 I'm thinking about, in particular,  
9 their FBAR filings where they indicated they  
10 had, you know, account balances that reflect  
11 ownership of the shares.

12 Q And in the FBAR filings, did the  
13 partnerships represent that they were the  
14 beneficial owners of the shares?

15 A I don't recall if the partnerships  
16 were required to file FBARs.

17 Q Were the partnerships, in fact, the  
18 beneficial owners of the shares?

19 MR. DEWEY: Objection.

20 A That's a question of, I believe,  
21 you know, U.S. pension law that the pension  
22 experts in my firm advised on.

23 It's my understanding that they  
24 advised that they were the owner of the  
25 shares.

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14 (Pages 50 to 53)

<p style="text-align: right;">Page 50</p> <p>1 ask them who was Axel Haelterman?</p> <p>2 <b>Q</b> No, no, I'm sorry. I thought you</p> <p>3 had -- I thought you had indicated that you</p> <p>4 spoke with Mr. Lhote or perhaps others of</p> <p>5 your former clients who assured you that</p> <p>6 notwithstanding Mr. Haelterman's advice, they</p> <p>7 had received advice from a Belgian lawyer who</p> <p>8 told them that the Belgian transactions were</p> <p>9 permissible under Belgian law.</p> <p>10 Is that correct?</p> <p>11 <b>A</b> Yes.</p> <p>12 <b>Q</b> Did you ask them who was that</p> <p>13 Belgian lawyer who advised them that it was</p> <p>14 permissible under Belgian law to do these</p> <p>15 transactions notwithstanding this sort sale</p> <p>16 issue?</p> <p>17 <b>A</b> I'm sorry. The reason I find your</p> <p>18 question difficult to understand is the</p> <p>19 "notwithstanding the short sale issue" part</p> <p>20 of the question.</p> <p>21 If you can perhaps recast your</p> <p>22 question so I can understand it more clearly?</p> <p>23 <b>Q</b> Sure.</p> <p>24 Did any of your client group tell</p> <p>25 you that they received a different legal</p>	<p style="text-align: right;">Page 51</p> <p>1 opinion from Freshfields on this short sale</p> <p>2 issue?</p> <p>3 <b>MR. DEWEY:</b> Objection.</p> <p>4 <b>A</b> To the best of my recollection we</p> <p>5 didn't have discussions specific to, as you</p> <p>6 put it, this short sale issue. The</p> <p>7 discussions we had as they related to Belgian</p> <p>8 and foreign law were general discussions of</p> <p>9 "did you vet this fully with your foreign</p> <p>10 lawyers, did they approve the transaction?"</p> <p>11 We did not have, to the best of my</p> <p>12 recollection, discussions that went into any</p> <p>13 detail.</p> <p>14 <b>Q</b> So you never asked your former</p> <p>15 clients, "What about the short sale position</p> <p>16 and who is the Belgian lawyer who says it's</p> <p>17 okay to do these transactions?"</p> <p>18 <b>MR. DEWEY:</b> Objection.</p> <p>19 <b>A</b> To be clear, my area of expertise</p> <p>20 is trusts and estates, related tax, and</p> <p>21 income tax, and estate tax matters. I don't</p> <p>22 have -- I wouldn't know to ask the question</p> <p>23 "what is the short sale issue." I couldn't</p> <p>24 even tell you what a short sale is.</p> <p>25 So forgive me for my naivete on</p>
<p style="text-align: right;">Page 52</p> <p>1 these matters, but no, that's not a question</p> <p>2 I would have asked.</p> <p>3 <b>Q</b> So you never went back to your</p> <p>4 client and said, "You have a lawyer who tells</p> <p>5 you you're on shaky legal grounds. Can you</p> <p>6 explain how you managed to go forward with</p> <p>7 transactions?"</p> <p>8 <b>A</b> I don't have a recollection --</p> <p>9 <b>MR. DEWEY:</b> I'm sorry, objection.</p> <p>10 Go ahead and finish the question.</p> <p>11 <b>Q</b> Let me rephrase the question.</p> <p>12 <b>MR. DEWEY:</b> Good enough.</p> <p>13 <b>Q</b> Did you ever ask your clients how</p> <p>14 they could go forward with any transaction</p> <p>15 after receiving an opinion telling them that</p> <p>16 their position under Belgian law was somewhat</p> <p>17 doubtful or on shaky legal grounds?</p> <p>18 <b>MR. DEWEY:</b> Objection.</p> <p>19 <b>A</b> I don't recall one way or the</p> <p>20 other.</p> <p>21 <b>MR. DEWEY:</b> We've been going about</p> <p>22 an hour. Whenever a good time is to</p> <p>23 take the first break?</p> <p>24 <b>MR. MAGUIRE:</b> Sure. Can we finish</p> <p>25 up one document, Tom? Is that okay?</p>	<p style="text-align: right;">Page 53</p> <p>1 <b>MR. DEWEY:</b> Sure.</p> <p>2 <b>Q</b> Sir, if you can look at Exhibit</p> <p>3 2260?</p> <p>4 <b>A</b> Bear with me. I'm just going to</p> <p>5 read it here.</p> <p>6 <b>Q</b> Of course.</p> <p>7 <b>A</b> (Witness reviewing.)</p> <p>8 Okay. Yes. What are your</p> <p>9 questions?</p> <p>10 <b>Q</b> Is this an e-mail that you received</p> <p>11 from Mr. Van Merkensteijn on or about</p> <p>12 October 29, 2014?</p> <p>13 <b>A</b> I don't have a recollection of this</p> <p>14 e-mail, but that's what the e-mail states.</p> <p>15 <b>Q</b> You'll see on the second page there</p> <p>16 is a reference to Belgian trades?</p> <p>17 <b>A</b> Yes.</p> <p>18 <b>Q</b> And this part, I believe, is an</p> <p>19 e-mail from Rich Markowitz.</p> <p>20 Right?</p> <p>21 <b>A</b> It's from Richard Markowitz to John</p> <p>22 Van Merkensteijn and Robert Klugman.</p> <p>23 <b>Q</b> And on Belgian trades, he points</p> <p>24 out the economics of the deal with Sanjay,</p> <p>25 points out that the numbers are that each</p>

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60 (Pages 234 to 237)

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1 Mr. Markowitz your comments on the Solo  
2 documents?

3 A I don't have a specific  
4 recollection of this e-mail or surrounding  
5 conversations, but I have the general  
6 impression and recollection that we looked at  
7 this document from a U.S. tax perspective  
8 consistent with our review of other  
9 documents.

10 In the course of that review, we  
11 may have raised other general points as they  
12 may have occurred to us from a common sense  
13 perspective. But ours was a -- was sort of,  
14 again, a tax review, the U.S. tax review.

15 And that's, I believe, why Louis  
16 Tuchman was copied on the balance of the  
17 exchanges.

18 Q Do you know what law applies to  
19 these Solo documents?

20 A I do not recall the document.

21 Q If you turn to the page that ends  
22 with the Bates number 564?

23 A Yes, I have that.

24 Q You'll see there's a give-up  
25 agreement in the middle of the page?

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1 A Yes.

2 Q In Section 1, you note, "It appears  
3 that any disputes would need to be heard in  
4 Belgium, which may foreclose, as a practical  
5 matter, the ability to bring a claim against  
6 the executing broker."

7 Do you see that?

8 A I do.

9 Q And what did you mean by that?

10 A As I mentioned, I don't have a  
11 specific recollection of this e-mail  
12 surrounding exchanges. But as I sit here  
13 now, it seems that the -- what I'm trying to  
14 say is, again, part of that common sense  
15 general review.

16 If there's a breach of a contract  
17 and you need to file suit in Belgium, it's  
18 going to cost you a lot of money. So it may  
19 be impractical to bring a lawsuit.

20 Q And if you turn just two headings  
21 down, you'll see there's a "Beneficial Owner  
22 Declaration Form?"

23 A I do.

24 Q And you say, "Ultimately, I think  
25 we are okay with the document, but I think

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1 that it is a close thing."

2 What did you mean by that?

3 A Well, again, I'm -- I believe,  
4 without having a recollection of the  
5 specifics of this e-mail exchange or related  
6 conversations. But as I sit here now looking  
7 at this, I believe I was saying that from a  
8 U.S. tax law perspective, we were comfortable  
9 with the provisions of the document.

10 Q Did you ever tell your former  
11 clients that you or your firm were okay with  
12 the beneficial owner declarations that they  
13 made for Denmark?

14 MR. DEWEY: Object to form. Could  
15 I have the question back, please?

16 Q Let me give you the question again.

17 MR. DEWEY: Thank you, Bill.

18 Q Did you ever tell your former  
19 clients that you or your firm were okay with  
20 the beneficial owner declarations they were  
21 making to Denmark?

22 MR. DEWEY: Objection.

23 A I don't recall one way or the other  
24 having a conversation where we used the  
25 words, "The beneficial declaration forms

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1 you're submitting to Denmark are okay."

2 Q Do you recall, in substance,  
3 communicating that view to your client group?

4 MR. DEWEY: Objection.

5 A I generally recall, in substance,  
6 communicating the view to the client group  
7 that the firm was comfortable. From a U.S.  
8 tax pension regulatory perspective, the plans  
9 were -- were the beneficial owners of the  
10 Danish securities.

11 Q And outside of that U.S. tax and  
12 regulatory boundary, with respect to the  
13 representations that were made to the Danish  
14 government, with respect to those  
15 representations, did you ever tell your  
16 former clients that you or your firm were  
17 okay, or words to that effect, with making  
18 those declarations to Denmark?

19 MR. DEWEY: Objection.

20 A As I think I might have mentioned  
21 in the past, we -- neither me nor my firm  
22 gave advice on non-U.S. law except to the  
23 limited extent that we had some of our  
24 German -- of our colleagues in our German  
25 office provide some advice on German law

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61 (Pages 238 to 241)

Page 238

1 matters.

2 With respect to Danish law and the  
3 interpretation of beneficial ownership, we  
4 relied on Jerome Lhote's representations to  
5 us that he had investigated the matter.

6 Q At the top of the page -- the  
7 previous page that ends with the Bates 563,  
8 you'll see there's a statement by  
9 Mr. Markowitz that he spoke with Solo about a  
10 few of the points you raised.

11 A I see that.

12 Q And do you understand, in that, he  
13 communicated that Solo did not intend for  
14 reclaims for withholding tax to be treated as  
15 TTC?

16 MR. DEWEY: The question is, does  
17 he see that?

18 MR. MAGUIRE: Yes.

19 A I see those words in the e-mail,  
20 yes.

21 Q And do you understand "TTC" to be  
22 "title transfer collateral?"

23 A No. I have no understanding today  
24 and no recollection if I had an understanding  
25 then of what "TTC" refers to.

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1 Q The next paragraph, he says, "On a  
2 related point, the whole working of TTC and  
3 having accounts pooled is critical to be able  
4 to have long and short client positions net  
5 out for regulatory and capital purposes, so  
6 this should remain."

7 Do you see that?

8 A I do see those words.

9 Q Did you understand that the plan  
10 accounts needed to be pooled at the custodian  
11 with the assets of other clients?

12 A Again, I have no recollection of  
13 this e-mail exchange or surrounding  
14 conversations, so I can't tell you what I  
15 understood or did not understand at the time.  
16 And as I sit here today, I can read the words  
17 and have just a general understanding of the  
18 basic words.

19 Q If you could turn to Exhibit 2266?

20 A I have that.

21 Q Is this an e-mail that  
22 Mr. Markowitz copied you on around July 14 of  
23 2014?

24 A The first page is, but I'm going to  
25 review the balance of the exchange for a

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1 moment.

2 (Witness reviewing.)

3 Yes, I've gone through the  
4 exchange.

5 Q And on the second page of the  
6 document, the one Bates stamp 862 -- do you  
7 see that?

8 A I do.

9 Q There's an e-mail from Mel Piasek,  
10 M-E-L, P-I-A-S-E-K, and he refers to the  
11 maximum contribution to a retirement plan,  
12 which was \$23,000.

13 Do you see that?

14 A I do.

15 Q And he makes the point that you can  
16 only contribute that amount, no matter how  
17 many plans you have?

18 A That seems to be the point he's  
19 making, yes.

20 Q So his point is, to take advantage  
21 of that full 23,000, you only need to set up  
22 one Roth 401(k) plan.

23 Right?

24 A That appears to be what he's  
25 saying.

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1 Q And then, on the front page,  
2 Mr. Markowitz notes, at the end of the e-mail  
3 at the very top, that he is aware of the  
4 maximum contribution limit.

5 Right?

6 A That's what he says at the e-mail  
7 at the top, yes.

8 Q And he says, "There's still a  
9 benefit to us for setting up multiple 401(k)  
10 plans, even with that limit?"

11 A I see that language.

12 Q What was the benefit to your client  
13 group in setting up multiple 401(k) plans?

14 A You would need to ask Richard  
15 Markowitz what he meant by that statement.

16 Q Wasn't the benefit to the client  
17 group the ability to have more plans  
18 participating in Danish trades on the Solo  
19 platform?

20 MR. DEWEY: Objection.

21 A You would need to ask Richard  
22 Markowitz what he meant by that statement.

23 Q Are you aware of any other benefit  
24 to Richard Markowitz or any of your client  
25 group other than that the more plans they



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67 (Pages 262 to 265)

Page 262

1 with the Bates number 914?

2 A Yes, I have that page.

3 Q If you could look at the -- near  
4 the bottom of the page, there's a paragraph,  
5 little "G" as in "George."

6 It's entitled "Indicia of  
7 Ownership?"

8 A Yes, I see it.

9 Q Do you understand what "Indicia of  
10 Ownership" is?

11 MR. DEWEY: Objection.

12 A I understand generally what the  
13 word "indicia" means.

14 Q This says, "The trustee shall not  
15 hold the indicia of ownership of any assets  
16 of the trust fund outside of the jurisdiction  
17 of the district courts of the United States  
18 unless in compliance with Section 404(B) of  
19 ERISA and the regulations thereunder."

20 Do you see that?

21 A I do.

22 Q Did you understand that all of the  
23 plan assets here were held in accounts at  
24 Solo or related custodians in the United  
25 Kingdom?

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1 MR. DEWEY: Objection.

2 A (Witness reviewing.)

3 This, if I understand you  
4 correctly, is speaking to "unless in  
5 compliance with Section 404(B) of ERISA,"  
6 which is a pension provision, to the best of  
7 my knowledge.

8 And so, to the extent that one  
9 might interpret assets as being held outside  
10 the United States, that would have been an  
11 issue -- that would be a pension issue  
12 addressed by Mr. Woodard.

13 Q Did Mr. Woodard address that issue?

14 A I don't know.

15 Q Do you have an understanding as to  
16 whether the plans holding their assets with a  
17 U.K. custodian was in compliance with this  
18 provision --

19 MR. DEWEY: Objection.

20 Q -- of the plan?

21 A To the extent that this speaks to  
22 an issue of pension law, I'm not familiar  
23 with pension law and have -- had no -- I've  
24 no recollection of having a view then, and I  
25 have no view now.

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1 Q Can you describe generally for us,  
2 sir, your -- the nature of your practice and  
3 any specialties that you have in your  
4 practice?

5 A My practice involves representing  
6 high net worth individuals, families, family  
7 offices with respect to their estate and gift  
8 planning, income tax minimization, and  
9 family -- family planning needs.

10 Q And what areas of law does that  
11 general practice require you to be involved  
12 in?

13 A Certain areas of income tax, not  
14 pensions, estate and gift tax, and to a  
15 certain extent, certain levels of corporate  
16 income tax and partnership income tax, what  
17 I'll call compliance reporting, the necessary  
18 forms one needs to file with the IRS to  
19 report certain types of ownership, and then  
20 trust law and estate law.

21 Q And when you say "high net worth  
22 individuals," what do you mean?

23 A People that have more money than  
24 me. It's a vague term. It just means, you  
25 know, people of substantial means and

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1 substance, and we have clients in a broad  
2 range of net worth categories.

3 Q And when you say "in a broad range  
4 of net worth," what are the upper and lower  
5 boundaries of that broad range?

6 MR. DEWEY: Objection.

7 A I might have a few clients in  
8 the -- let's call it \$5 million net worth  
9 range, and I have one outlier in the probably  
10 20 billion range, and then sort of a  
11 concentration, if you can call it that, in  
12 the hundred million to 3 billion range.

13 Q And when you say "a concentration,"  
14 can you tell us approximately how many people  
15 you have in that hundred -- how many clients  
16 you have in that hundred million to \$3  
17 billion range?

18 MR. DEWEY: Objection.

19 A I would tell -- I mean, this is not  
20 at all scientific and I'm just guessing,  
21 but -- yeah, I'm not going to speculate as to  
22 numbers. I couldn't.

23 I couldn't speculate.

24 Q Can you give us a general range?

25 A Yeah, it would just be speculation.